

By Mail/Delivery and E-MAIL to: Engels.alan@epa.gov

March 13, 2018

Alan Engels
Regional Freedom of Information Officer
EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Public Records Request

Dear Mr. Engels,

On behalf of the Sierra Club, I write to request that the U.S. Environmental Protection Agency ("EPA") provide copies of the records described below, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed to another person, please forward this request to that person.

The Sierra Club is the nation's oldest environmental organization. It has more than 1.3 million members and supporters nationwide, and is dedicated to the protection and preservation of the natural and human environment. Among many other issues, the Sierra Club is dedicated to solving the pressing environmental and health problems associated with the construction and operation of federal highways and their air, noise, and water pollution impacts.

I. Definition of Documents

A. For this request, "documents" means:

- Records in any printed, written or electronic format, including but not limited to communications, letters, emails, phone notes, meeting notes, data files, inputs to or outputs from modeling analyses, reports, analyses, or memoranda.
- Internal documents related to, or regarding consideration of, any of the subjects listed herein as part of the I-70 Project conformity determination.
- All documents related to, or regarding consideration of, any of the materials addressed in this request between or among EPA Region 8 staff and the Office of Transportation Air Quality, and between or among EPA staff and any external agency, including but not limited to, the Federal Highway Administration ("FHWA"), any office or department of

the State of Colorado, including but not limited to the Colorado Department of Transportation (“CDOT”), DRCOG, the City and County of Denver, Adams County, any private contractor, and/or any air quality or health researcher or investigator.

B. Exempt Records:

If you invoke a FOIA exemption with regard to any of the requested records, please provide a *Vaughn* index that include sufficient information in your full or partial denial letter to allow the Sierra Club to appeal the denial. At a minimum, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

Note that CEQ regulations governing the NEPA process prohibit agencies from withholding certain interagency documents related to the NEPA process. 40 C.F.R. §1506.6. If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record.

II. Documents Requested

This request concerns the proposed expansion of I-70 through north Denver, known as the I-70 East Phase 1 (Central 70) Project (“I-70 Project” or “Project”). Please provide all documents that are in any way related to air quality modeling of expected future emissions of PM-10 and the calculation of design values for the I-70 Project, performed for either the Final EIS (January 2016) for the Project or the conformity determination in the Federal Highway’s (“FHWA”) Record of Decision, Attachment C7, including but not limited to efforts to demonstrate the I-70 Project’s conformity under the Clean Air Act.¹

Specifically, we request all documents that discuss, analyze, consider, reference, or contain inputs to or outputs from emission models and air pollutant dispersion models related to the following subjects:

A. Documents Related to Air Quality Modeling Results:

1. Context for the Request in II.A.2.:

The electronic data files identified by the following headers were the AERMOD Data Files emailed from the Colorado Department of Transportation (“CDOT”) by Ms. V. Henderson

¹ http://www.i-70east.com/ROD/I-70EastEIS_ROD_AttC7_Air-Quality-Conformity.pdf

to Mr. Drew Dutcher on January 4, 2017, in response to a request during the comment period for information regarding the modeling performed for the conformity determination:

- “AERMOD-V I-70 & I-25 Phase 1 ML.inp”
- “AERMOD-V I-70 & I-25 Phase 1 ML.out” produced on 11/5/2016 15:33:24
- “AERMOD-V_I-70_I-25_Phase1ML2040_PM10_5yrAvg24hr.plt” produced on 11/5/2016 at 15:33:24.
- “AERMOD-V_I-70_I-25_Phase1ML2040_PM10_5yrAvg24hr.sum” produced on 11/5/2016 15:33:24
- “AERMOD-V I-70 & I-225 Phase 1 ML.inp”
- “AERMOD-V I-70 & I-225 Phase 1 ML.out” produced on 10/30/2016 at 18:59:12
- “AERMOD-V_I-70_I-225_Phase1ML2040_PM10_5yrAvg24hr.plt” produced on 10/30/2016 at 18:59:12
- “AERMOD-V_I-70_I-225_Phase1ML2040_PM10_5yrAvg24hr.sum” produced on 10/30/2016 at 18:59:12
- AERMOD (15181): I-70 & I-225 Interchange | Phase 1 Managed Lane Alt 10/30/16
- AERMET (15181): PM-

None of these files contain outputs from one model run that contains the modeled concentrations for all receptors located in the modeling domain for the I-25/I-70 interchange. One model run contains outputs for more than 3,200 receptors in the domain, but omits the outputs reporting concentrations for seven receptors located in parking lots adjacent to the exit ramp from NB I-25 onto EB I-70. Separate model runs contain outputs reporting concentrations for the seven receptors omitted from the model run containing outputs for all other receptors. But the inputs for the different model runs are not the same. Single modeling runs that produce results for all receptor locations must have been performed before receptors were identified for separate model runs.

2. Documents requested from EPA:

- a. Output results from all model run(s) that include all receptor locations in the I-25/I-70 modeling domain and use consistent input parameters for all emission source segments.
- b. Input and output files for all modeling runs not included in the above list of electronic data files.
- c. All documents explaining the differences in the inputs used to model all but seven receptor locations, and the inputs used to model the seven receptor locations missing from the general model run.
- d. All documents received by or known to EPA that contain, reference or discuss any information communicated between Federal Highway Administration (“FHWA”),

Colorado Division director or staff and FHWA air quality technical support staff, and/or air modeling contractor, discussing, requesting or authorizing separate modeling runs for the seven receptor locations omitted from the general modeling run.

- e. All documents received by or known to EPA that contain, reference or discuss any information communicated within FHWA, including but not limited to between the Colorado Division and the air quality technical support office, and/or air modeling contractor, explaining why separate modeling runs were performed for seven receptor locations, what differences in modeling inputs would be used, and all rationales for using different modeling inputs for modeling different receptors.
- f. All documents received by or known to EPA that contain, reference or discuss any interagency consultation or communication between or among FHWA and a) EPA, and/or b) CDOT, and/or c) Colorado Department of Public Health and Environment (“CDPHE”), explaining why separate modeling runs were performed for seven receptor locations, what differences in modeling inputs would be used, and all rationales for using different modeling inputs for different receptors.
- g. All internal communications within EPA, including communications between or among staff within Region 8, or between staff in Region 8 and staff in the Office of Transportation Air Quality regarding any of these i-70 Project modeling or design value calculation matters.
- h. All communications from EPA authorizing FHWA and/or CDOT to --
 - i. perform separate modeling for the seven receptor locations omitted from the general modeling that used different input parameters from the inputs used for the general modeling run; and/or
 - ii. depart from specific criteria for modeling assumptions or other criteria specified in EPA’s Transportation Conformity Guidance for Quantitative Hot-spot Analysis in PM2.5 and PM10 Nonattainment and Maintenance Areas,² Appendix J, §3.3,³ or AERMOD modeling guidance, or other relevant guidance.

B. Documents Related to Disclosure of Data Inputs, and Assumptions and Procedures Used to Model Project Emissions for Interagency Consultation and Public Involvement:

1. Context for the Request in II.B.2.:

² See <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100NMXM.pdf>

³ See <https://nepis.epa.gov/Exe/ZyPdf.cgi?Dockkey=P100NN22.pdf>

An EPA letter dated January 12, 2017, from Monica Morales, Acting Director, Air Program, to Chris Horn, FHWA, and Vanessa Henderson, CDOT, “Re: I-70 East Project – Draft Air Quality Conformity Determination and the National Environmental Policy Act Comparative Analysis for the Record of Decision (ROD)” states:

We are concerned that the federal interagency requirements [40 CFR 93.105(c)(1)(i)] were not met for this latest version of the analysis contained in the Draft Air Quality Update because the EPA did not have sufficient technical information on the modeling methods and assumptions before the 30-day public comment period began (December 16, 2016). At this point in time, EPA still does not have sufficient documentation to verify the methods and assumptions used in the PM10 hot-spot analysis.

Reproduced in the Record of Decision for the I-70 Central Project, Attachment F.⁴

An EPA letter dated January 18, 2017, from Monica Morales, Acting Director, Air Program, to Chris Horn, FHWA, and Vanessa Henderson, CDOT, “Re: I-70 East Project – Draft Air Quality Conformity Determination and the National Environmental Policy Act Comparative Analysis for the Record of Decision (ROD)” refers to a “January 17th call” that resolved EPA’s concerns, as stated in EPA’s January 12, 2017 letter, and states “After reviewing the supporting technical information received on January 17, EPA was able to complete a review of how the hot-spot analysis was performed.” Reproduced in the Record of Decision for the I-70 Central Project, Attachment F.⁵

2. Documents requested from EPA:

- a. All notes of or related to the January 17, 2017 call between EPA staff and FHWA staff.
- b. All documents containing the “technical information” referenced in the EPA letter dated January 18, 2017, and received by EPA from FHWA on January 17, 2017.
- c. The email dated December 22, 2016, from EPA to FHWA that described EPA’s request for additional PM10 hot-spot modeling information.
This email is referenced in EPA’s January 12, 2017 letter to FHWA.
- d. All documents included in the response from FHWA on 12/23/16 to EPA’s 12/22/16 email request described above.
This response is referenced in EPA’s January 12, 2017 letter to FHWA.
- e. All documents included in, referenced in, or attached to the email from FHWA on January 4, 2017 “that provided additional PM10 hot-spot modeling information.”
This email is referenced in EPA’s 1/12/17 letter.

⁴ http://www.i-70east.com/ROD/I-70EastEIS_ROD_AttF_Comments-on-Air-Quality-Documents.pdf at p. 211.

⁵ http://www.i-70east.com/ROD/I-70EastEIS_ROD_AttF_Comments-on-Air-Quality-Documents.pdf at p. 281.

- f. All documents containing any of the “Information released to the EPA [by FHWA] on December 16, 2016,” including but not limited to a “spreadsheet that illustrated the link-by-link truck information that was used.”

This information is referenced in EPA’s 1/12/17 letter.

- g. EPA’s January 12, 2017, letter states that information EPA needed to review the PM10 hot-spot analysis was missing. Provide all documents and communications related to the following:
 - i. Modeling protocol used for the Draft Air Quality Conformity Determination.
 - ii. Link by link traffic volumes used for the Draft Air Quality Conformity Determination.
 - iii. Scripts and intermediate tables used to calculate the grams/second rates for volume sources for the Draft Air Quality Conformity Determination.
 - iv. How emissions factors from MOVES modeling were applied to the AERMOD input files used for the Draft Air Quality Conformity Determination.

3. Context for the Request in II.B.4.:

EPA’s above-referenced letter dated January 12, 2017, includes a timeline that refers to several EPA information requests and FHWA responses to those requests dated December 1, 2016, December 16, 2016, and December 18, 2016.

4. Documents requested from EPA:

- a. All communications and documents containing, describing or referring to EPA’s request for “outstanding modeling information for the PM10 hot-spot analysis” and “additional PM10 sensitivity analysis,” referenced in the timeline under the entry for December 1, 2016.
- b. All communications and documents containing, describing, discussing or referring to FHWA’s response to EPA’s request for “outstanding modeling information for the PM10 hot-spot analysis” and “additional PM10 sensitivity analysis,” referenced in the timeline under the entry for December 1, 2016.
- c. All communications, documents and data files that FHWA provided to EPA regarding the Draft Air Quality Update document and information available for EPA’s review, referenced in the timeline under the entry for December 16, 2016.
- d. All communications and documents containing, describing or referring to EPA’s request for “additional AERMOD files for the PM10 hot-spot modeling,” referenced in the timeline under the entry for December 18, 2016.
- e. All communications and documents containing, describing, discussing or referring to FHWA’s response to EPA’s request, referenced in the timeline under the entry for

December 18, 2016, including but not limited to, any data files and “AERMOD files for the PM10 hot-spot modeling”.

C. Documents Related to Estimating Truck Share of VMT Mix:

1. Context for the Request in II.C.2.:

On November 2, 2016, FHWA responded to EPA’s request for information regarding truck traffic volumes (See AR at 00424.pdf, 29028-29029). FHWA responded that “Separate tables of emission rates were developed for ‘cars’ and ‘trucks’ as defined in the DRCOG model.

2. Documents requested from EPA:

- a. All documents containing, describing or referring to EPA’s evaluation of the DRCOG traffic model and data used for traffic modeling to generate traffic estimates for individual links.
- b. All documents containing, describing or referring to EPA’s review of the methodology applied to generate traffic estimates for individual links from DRCOG traffic modeling data.
- c. All documents containing, describing or referring to EPA’s assessment of the reliability of the traffic modeling data for links on I-70 by comparing the modeled truck data with actual truck traffic counts.
- d. All documents containing, describing or referring to EPA’s evaluation of how the traffic modeling produced estimates of traffic counts by vehicle classification, how vehicle classes were defined, and which vehicle classes were estimated in the traffic modeling.
- e. All documents containing, describing or referring to EPA’s evaluation of how vehicles classified as “trucks” in the traffic modeling were allocated to vehicle classes required as input to EPA’s MOVES for the purpose of determining total emissions.

D. Publication of Amended Transportation Conformity Hot-spot Guidance.

Provide the volume, page and date reference for any publication in the Federal Register after December 20, 2010, of revisions or amendments to EPA’s “Transportation Conformity Guidance for Quantitative Hot-spot Analysis in PM2.5 and PM10 Nonattainment and Maintenance Areas.”

III. Fee Waiver Request

The Sierra Club respectfully requests that you waive all fees in connection with this request, as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can participate meaningfully in discussions and agency decisions regarding the expansion or development of federal highways that affect environmental quality and the public health. In addition, this request seeks the release of documents relevant to Sierra Club claims filed in the Federal District Court for the District of Colorado.

This FOIA request satisfies the factors listed in the governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), see also 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The requested records relate to the performance of FHWA’s obligation under the Clean Air Act to determine the conformity of the I-70 Project with the applicable implementation plan, pursuant to 42 U.S.C. § 7506(c). This determination is an “identifiable operation[] or activit[y] of the government.” The Department of Justice’s Freedom of Information Act Guide states expressly that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government. This is such a case.

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

The Freedom of Information Act Guide makes clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of EPA’s and U.S. DOT’s decisions because they are not otherwise in the public domain and are not accessible, other than through a FOIA request. To the extent any of the requested documents have been published as part of the Final EIS or Record of Decision for the I-70 Project, please identify their specific location(s) in these or other publicly-available NEPA documents. This information will facilitate meaningful public participation in the decision-making process, thereby fulfilling FOIA’s purpose and the overall public interest that documents requested be “meaningfully informative” and “likely to contribute” to an understanding of EPA’s role in the conformity decision-making process.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

As described above, the Sierra Club and its members have a longstanding interest and expertise in the subject of the air quality impacts of highways. More importantly, the Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of both its members living in north Denver, the broader Denver area, and the “public-at-large.”

The Sierra Club intends to disseminate the information it receives through FOIA, regarding these government operations and activities, in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organization’s website, emailing and list-serve distribution to members and other organizations representing residents of the neighborhoods affected by the I-70 Project.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities. The public’s understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of the government’s role and its “operations and activities” associated with the decision-making process for the I-70 Project’s EIS and conformity determination. Disclosure of the requested records is essential to the public’s understanding of the considerations utilized by the Agency in determining whether the Conformity Determination made by FHWA for the I-70 Project is lawful and in the public

interest. After disclosure of these records, the public's understanding of transportation conformity will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest," as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and, as such, has no commercial interest. The requested records will be used to further the Sierra Club's mission to inform the public on matters of vital importance to protecting the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not "primarily" in the Sierra Club's commercial interest. On the other hand, it is clear that disclosure of the requested information is in the public interest because disclosure will contribute significantly to public understanding of highway development and its impacts on human health and the environment.

Because the public will be the primary beneficiary of this requested information, the Sierra Club requests respectfully that EPA waive all processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). If EPA denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

IV. Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and EPA regulations. 5 U.S.C. § 552 (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the requested records on a rolling basis; at no point should the search for - or deliberation concerning - certain records delay the production of others that the agency has already retrieved and are not exempt from disclosure.

If possible, please send all documents in PDF format via electronic mail, external website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, but electronic format is preferred. I would be glad to pick them up at Region 8's offices in Denver; please call me at 303-728-4131 to arrange a pick-up. If you prefer to mail or deliver the requested records, please send them as soon as possible to:

Becky English
Sierra Club
c/o Law Committee
1536 Wynkoop Street, Suite 200
Denver, CO 80202

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 303-728-4131 or by email at beckyrep@gmail.com.

Sincerely,

/s/ Becky English

Becky English

Attach: PDF 424

